

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JOSE LUIS RUBIO,

Petitioner,

v.

BRIAN PHILLIPS,

Respondent.

No. 1:23-cv-00768-JLT-SAB (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS, DIRECTING CLERK OF COURT
TO CLOSE CASE, AND DECLINING TO
ISSUE CERTIFICATE OF APPEALABILITY

(Doc. 6)

Jose Luis Rubio is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus brought pursuant to 28 U.S.C. § 2254. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On June 16, 2023, the magistrate judge issued findings and recommendations recommending that the petition for writ of habeas corpus be dismissed without prejudice for failure to state a cognizable federal habeas claim. (Doc. 6.) On October 16, 2023, Petitioner filed timely objections. (Doc. 11.)

According to 28 U.S.C. § 636(b)(1)(C), the Court has conducted a *de novo* review of the case. Having carefully reviewed the entire file, including Petitioner's objections, the Court concludes that the findings and recommendations are supported by the record and proper analysis.

Having found that Petitioner is not entitled to habeas relief, the Court now turns to whether a certificate of appealability should issue. A petitioner seeking a writ of habeas corpus

1 has no absolute entitlement to appeal a district court's denial of his petition, and an appeal is only
2 allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003); 28 U.S.C.
3 § 2253. The Court should issue a certificate of appealability if "reasonable jurists could debate
4 whether (or, for that matter, agree that) the petition should have been resolved in a different
5 manner or that the issues presented were 'adequate to deserve encouragement to proceed
6 further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S.
7 880, 893 & n.4 (1983)).

8 In the present case, the Court finds that reasonable jurists would not find the Court's
9 determination that the petition should be dismissed debatable or wrong, or that Petitioner should
10 be allowed to proceed further. Therefore, the Court declines to issue a certificate of appealability.
11 Accordingly, the Court **ORDERS**:

- 12 1. The findings and recommendations issued on June 16, 2023 (Doc. 6) are **ADOPTED**
13 **IN FULL**.
- 14 2. The petition for writ of habeas corpus is **DISMISSED**.
- 15 3. The Clerk of Court is directed to **CLOSE THE CASE**.
- 16 4. The Court declines to issue a certificate of appealability.

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18 IT IS SO ORDERED.

19 Dated: **November 19, 2023**


UNITED STATES DISTRICT JUDGE